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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 566

WINNIE W. SCYPHERS,
PETITIONER,

v.

ST. PAUL NATIONAL BANK

REPLY TO PETITION FOR CERTIORARI

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SUPREME COURT OF THE UNITED STATES

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ST. PAUL NATIONAL BANK

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We respectfully submit that the Court should not grant a writ of certiorari in this case. The allegations of fact on which the petition is based are not adequately supported by evidence in the record; and, even if the facts alleged were admitted to be true, they would not be material.

The petition for certiorari is based on the following alleged facts, none of which is supported by evidence, and none of which is material:

1. "it was well known that Hobert Scyphers is a son of Winnie W. Scyphers." (Pet. p. 4).

Apparently the Court is asked to take judicial notice of this fact. The Record contains a "Petition to Re-Hear" beginning on page 58 and ending on page 64. This petition is sworn to by Winnie W. Scyphers, the present petitioner, but she does not claim that Hobert Scyphers is her son. At page 63, she swears that Hobert Scyphers is in the army "and said Hobart Scyphers is

interested and would be greatly affected by a sale of said property."

2. "It is alleged that this soldier's interest would be fatally affected by the sale of this property."

The foregoing allegation on page 4 of the present petition appears to be based on the sworn petition to re-hear that we have just quoted from. The record contains no suggestion (so far as we have been able to discover) that Hobert Scyphers would be affected either "greatly" or "fatally" or in any other way.

3. "This tract of land conveyed to secure this debt contains the home where he was raised and where he lived when he was inducted into the service." (Pet. p. 4).

The foregoing allegation of the petition does suggest that Hobert might be sentimentally affected by the foreclosure of the mortgage on the old homestead. But no Act of Congress forbids the foreclosure of mortgages or deeds of trust secured by liens on soldiers' boyhood homes; and there is no evidence in the record that Hobert Scyphers or anybody else ever lived on the premises in question.

4. "Hobert Scyphers was a proper party." (Pet. p. 2).

The petition gives a page reference in support of this allegation, namely, "(R. 32)". The name of Hobert Scyphers does not seem to be on page 32 of the Record. The very complicated litigation disclosed in the Record was a suit to collect numerous debts of the petitioner out of property belonging to the petitioner. She owned a large number of pieces of land, but, as appears on R. p. 12, she was the fee simple owner of these parcels of land. Hobert Scyphers did not have any interest in

any of the parcels. Consequently, he could not have been a proper party to this litigation.

But it is entirely immaterial whether he was a proper party or not. The fact is that he was not and is not a party to this litigation.

Since he is not a party to the suit, no decree entered in the suit could be binding on him or affect his rights in any way.

5. The petitioner complains (Pet. pages 5 and 9) that the absent soldier should have a chance to "conduct his defense" or "make his defense."

But we find no suggestion anywhere as to what that "defense" would be. Since nobody is demanding anything in these proceedings from Hobert Scyphers, there is nothing for him to defend himself against. If he should later claim that he did not sign the note which petitioner claims he signed, that defense will certainly not be prejudiced by anything that has happened in these proceedings.

The Record which petitioner has brought up does not contain the pleadings, so that it does not appear whether or not a deficiency decree has been sought even against the petitioner. But it does appear that no relief of any kind has been sought or granted against Hobert Scyphers. There is nothing to support the suggestion on page 9 of the petition that this soldier "must *comply with such judgments or decrees*, and at the same time expose himself to destruction while thousands of miles away."

The sections of the statute relied upon by the petitioner are quoted on pages 12 and 13 of the petition in the manner required by the rules of this Court. Those sections deal exclusively with the rights of soldiers

who are either plaintiffs or defendants to the pending litigation. Since Hobert Scyphers is not a plaintiff, nor a defendant, nor a party, it is clear that the Act of Congress gives him no relief.

Since the Act of Congress cannot possibly apply to one in his position it is manifest that the petition is filed solely for the purpose of delaying the foreclosure of the numerous liens described in the Record, and the petition should be denied.

Respectfully submitted,

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Counsel for Respondent